United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 21-0891**
	)	**Issued: December 22, 2021**
DEPARTMENT OF VETERANS AFFAIRS, NY HARBOR HEALTHCARE SYSTEM, New York, NY, Employer	)	

Appearances:
Paul Kalker, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 17, 2021 appellant, through counsel, filed a timely appeal from an April 15, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted February 28, 2020 employment incident.

FACTUAL HISTORY

On March 16, 2020 appellant, then a 71-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on February 28, 2020, while in the performance of duty, her chair rolled and when she attempted to stop it, it hit her chest and fractured her left rib. She stopped work on March 2, 2020.

In a duty status report (Form CA-17) dated March 16, 2020, appellant's date of injury was noted as February 28, 2020 and her diagnosis was listed as rib contusion. The history of injury was related as "hit left rib area on bar of chair." Appellant's work restrictions were indicated. The signature on the form is illegible.

By letter dated March 18, 2020, the employing establishment controverted appellant's claim. It alleged that the injury did not occur in the performance of duty because it occurred after appellant's daily shift. The employing establishment also submitted an x-ray report of appellant's chest and left rib cage, dated March 6, 2020, from Dr. Monica Mishra, a Board-certified diagnostic radiologist, which related an impression of no rib fracture.[3]

In a development letter dated April 13, 2020, OWCP informed appellant that additional factual and medical evidence was necessary to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a medical report dated April 14, 2020 from Dr. Shu Zhang, a family medicine practitioner. Dr. Zhang related that appellant was injured on February 28, 2020 and he diagnosed a rib fracture. He indicated by checkmark that appellant's injury was work related.

By decision dated May 26, 2020, OWCP denied appellant's claim, finding that she had not established that the incident occurred on February 28, 2020, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received additional medical evidence. In a report dated March 10, 2020, Dr. Elbert Ching, an osteopathic physician Board-certified in emergency medicine, related that on February 28, 2020 appellant bent over while putting on her shoes and her chair rolled. He noted that appellant alleged that her first x-ray showed that she had a rib fracture; however, the second x-ray showed that she had a contusion. Dr. Ching indicated that appellant's x-ray revealed a probably healed lucency left 9th rib, possible old healed fracture. He also related that appellant had no direct injury and that she also had osteopenic changes.

[3] OWCP received photographs of appellant sitting in a chair at the employing establishment on March 16, 2020.

In a report dated March 24, 2020, Dr. Terrance Chan, a Board-certified internist, reiterated that appellant felt left-sided rib pain as she was bent over while putting on her shoes and her chair moved, but that appellant had a possible old healed fracture and no direct injury. He diagnosed rib fracture and instructed appellant to go directly to the emergency room.

In a medical report dated April 14, 2020, Dr. Zhang reiterated appellant's history of injury and diagnosed a work-related injury, with a diagnosis of rib fracture.

On January 29, 2021 appellant, through counsel, requested reconsideration of OWCP's May 26, 2020 decision.

Appellant submitted a January 24, 2021 response to OWCP's development questionnaire. She attested that she injured herself when she sat down in a chair at her computer desk and it moved, causing her to hit her chest on the left arm of her chair at 4:30 p.m., during the course of work. Appellant stated that she first sought treatment on March 2, 2020 at an urgent care facility.

OWCP also received a March 2, 2020 report from Sharona Kashimallak, a physician assistant. Ms. Kashimallak related that appellant's x-ray showed a left 9th rib fracture of indeterminate age.

By decision dated April 15, 2021, OWCP modified its May 26, 2020 decision to find that the incident occurred as alleged. However, the claim remained denied as causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning FECA, that the claim was timely filed within the applicable time limitation period of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established.

[4] *Id*.

[5] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

There are two components involved in establishing fact of injury. The first component to be established is that, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[8]

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted February 28, 2020 employment incident.

Initially, OWCP received an x-ray report of appellant's chest and left rib cage dated March 6, 2020 from Dr. Mishra, which related an impression of no rib fracture. Diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's accepted employment incident/exposure and a diagnosed condition.[11] This evidence is therefore insufficient to establish the claim.

OWCP received a medical report dated April 14, 2020 from Dr. Zhang, which diagnosed appellant with a left rib fracture and indicated by checkmark that it was work related. The Board has held that an opinion on causal relationship with an affirmative checkmark, without more by the way of medical rationale, is insufficient to establish the claim.[12] As such, this report is insufficient to establish appellant's claim.

Appellant submitted medical reports dated March 10, 2020 from Dr. Ching, March 24, 2020 from Dr. Chan, and April 14, 2020 from Dr. Zhang, all of which noted appellant's history of injury and diagnosed a left rib fracture. While these reports noted appellant's history of pain as she bent down to change her shoes, these medical reports did not provide an opinion regarding the

[8] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[11] *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

[12] *See C.S.*, Docket No. 18-1633 (issued December 30, 2019); *D.S.*, Docket No. 17-1566 (issued December 31, 2018).

cause of appellant's diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13] As such, these reports are insufficient to establish appellant's claim.

OWCP also received a report dated March 2, 2020 from Ms. Kashimallak, a physician assistant, which indicated a diagnosis of fractured rib. The Board has explained that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA and, therefore, their opinions do not constitute medical evidence.[14] Consequently, Ms. Kashimallak's report will not suffice for purposes of establishing entitlement to FECA benefits.[15]

A March 16, 2020 Form CA-17 contains an illegible signature. The Board has held that a report that is unsigned or bears an illegible signature lacks proper identification and cannot be considered probative medical evidence as the author cannot be identified as a physician.[16] This report is, therefore, insufficient to establish appellant's claim.

As there is no rationalized medical evidence of record establishing a medical condition causally related to the accepted February 28, 2020 employment incident, the Board finds that appellant has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted February 28, 2020 employment incident.

[13] *D.C.*, Docket No. 19-1093 (issued June 25, 2020); *see L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] 5 U.S.C. § 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law," 20 C.F.R. § 10.5(t). *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *see also M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

[15] *Id*.

[16] *I.M.*, Docket No. 19-1038 (issued January 23, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board